HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY

Writ Appeal No.534 of 2006

Between:

M. Ramachandraiah … Appellant

And

Sri Venkateswara Institute of Medical Sciences, SVIMS University, rep. by Its Registrar, Tirupati & others. … Respondents

:: JUDGMENT ::

Counsel for the Appellant : Dr. A.M. Krishna

Counsel for Respondent Nos.1 to 3 : Mrs. P.Sarada

Counsel for Respondent No.4 : Advocate General assisted by Government Pleader for Medical Health & Family Welfare.

3rd July, 2006

Per G.S.Singhvi, C.J.

This appeal is directed against order dated 27-4-2006 passed by the learned Single Judge in WPMP.No.11547 of 2006 in Writ Petition No.7052 of 2006 whereby he declined the appellant's prayer for interim relief, which would have enabled him to continue in service beyond the age of 58 years.

After completing 24 years service in the Indian Army, the appellant was appointed as Librarian in the services of Sri Venkateswara Institute of Medical Sciences (for short 'the University'). On his attaining the age of 58 years, the concerned authority of the

University issued proceedings dated 3-4-2006 for his retirement from service with effect from

31-5-2006. Immediately thereafter, the petitioner filed writ petition under Article 226 of the Constitution, which was registered as Writ Petition No.7052 of 2006, and prayed for quashing proceedings dated 3-4-2006. He pleaded that in terms of Section 2 (k) of Sri Venkateswara Institute of Medical Sciences University Act, 1995 (for short 'the 1995 Act'), he falls within the definition of 'teacher' and, as such, he is entitled to continue in service up to the age of 60 years. In support of his prayer, the petitioner relied on order dated 22-11-2004 passed by the learned Single Judge in Writ Petition No.22678 of 2003 - **Dr.M.Sankara Reddy v. Potti Sree Ramulu Telugu University, Hyderabad**, interlocutory order dated

5-11-2003 passed by the learned Single Judge in WVMP No.3552 of 2003 in WPMP No.28388 of 2003 in Writ Petition No.22678 of 2003, and a judgment of Karnataka High Court in Writ Appeal No.8746 of 1996 – **C.K.Pattamashetti v. The Bangalore University and another**, and pleaded that he is entitled to continue in service up to the age of 60 years as of right.

The learned Single Judge referred to the definition of 'teacher' contained in Section 2 (k) of the 1995 Act, referred to the judgment of this Court in **P.S.Ramamohana Rao v. A.P. Agricultural University**[1] and order dated 6-4-2006 passed in Writ Petition No.21035 of 2002 and concluded that there was no valid ground to pass an interim order facilitating the petitioner's continuance in service beyond 31-5-2006. The relevant extracts of the order passed by the learned Single Judge read as under:

> "The only question which is, therefore, required to be examined is as to whether the petitioner is conducting training, research or imparting medical or paramedical education in the respondent institution. This question can be decided only after all the pleadings are complete. Reliance placed by the petitioner on **P.S. Rama Mohana Rao v. A.P. Agricultural**

University {(1997) 8 SCC 350} is of no assistance to him since the said case related to a physical director and not a librarian. On the other hand, this Court in W.P.21035 of 2002 dated 6.4.2006 held that an assistant librarian who has not imparted instruction or had conducted and guided research or extension programmes does not form part of the definition of 'teacher', is not entitled to continue in service till he reaches the age of 60 years.

The petitioner's grievance is that in case no interim orders are passed, he will be forced to retire on 31-5-2006 when he reaches the age of 58 years. Since the right of the petitioner to continue in service till he reaches the age of superannuation of 60 years would only arise if there is a declaration by this Court that he falls within the definition of a teacher under Section 2 (k) of the Act, which can only be after the writ petition is heard, the interim relief sought for to continue him in service till he reaches 60 years of age cannot be granted. Needless to state that in case the petitioner succeeds in the writ petition, he shall be entitled for salary for these two years period from 31-5-2006 till he reaches the age of 60 years. Since the relief, if granted, would, in effect, amount to allowing the writ petition itself, I see no reason to grant the interim direction as sought for."

Feeling aggrieved by the order of the learned Single Judge, the appellant preferred letters patent appeal. The Vacation Bench admitted the appeal on 30-5-2006 and passed interim order in WAMP.No.1144 of 2006, the relevant extracts of which are reproduced below:

" The learned counsel for the appellant had placed before us the copy of the judgment of this Court in Writ Petition No.22678 of 2003, dated 22-11-2004, wherein it was held that the Librarian in Sri Potti Sreeramulu Telugu University is entitled to be in service till he attains 60 years of age. Similar orders in respect of other universities are also relied upon.

Hence, there shall be an interim direction to the respondents to continue the petitioner-appellant till he attains the age of 60 years or until further orders, whichever is earlier."

We have heard learned counsel for the parties and perused the record of the case including order dated 22-11-2004 passed by the learned Single Judge in Writ Petition No.22678 of 2003 and judgment of the Karnataka High Court on which learned counsel for the respondent placed reliance in support of his client's prayer for being allowed to continue in service up to the age of 60 years.

At this stage, we do not want to express any opinion which may prejudice the cause of either of the parties in the main petition, but having perused the definition of 'teacher' contained in Section 2(h) of the Telugu University Act in conjunction with Rule 3 of Statute 22 and Clause 3 of Statute 29, which was interpreted by the learned Single Judge in Writ Petition No.22678 of 2003 - **Dr.M.Sankara Reddy v. Potti Sreeramulu Telugu University, Hyderabad**, we are convinced that the said judgment cannot be made basis for recording a finding that the post of Librarian falls within the definition of 'teacher' contained in
Section 2 (k) of the 1995 Act.

Before the petitioner, who was employed as Librarian, can be said to fall within the definition of 'teacher' under Section 2 (k) of the Act, the Court shall have to determine whether he was conducting training, research or imparting medical or paramedical education in the Institute. Till that is done, it is not possible to accept his plea that he is entitled to continue in service up to the age of 60 years, which is the age of retirement prescribed for 'teacher'.

In the premise aforesaid, we agree with the learned Single Judge that the writ petitioner (appellant herein) has failed to make out a case for grant of interim relief.

We are further of the view that the factors like balance of convenience, irreparable injury and public interest are not in favour of staying the retirement of the appellant after he reached the age of superannuation i.e., 31-5-2006. If the writ petition is ultimately allowed by the Court, it may be possible to ordain the University either to reinstate the appellant or to give him monetary benefits. If, on the other hand, the writ petition is admitted and stay order in terms of the direction given by the Division Bench is continued, it will be impossible for the Institute to recover the amount which the appellant would have drawn by working in the service of the University.

There is another reason for our disinclination to entertain the

appellant's prayer for interim relief. As per the existing statutes, the appellant cannot continue in service beyond the age of 58 years. The post vacated by him will be filled by appointing another person, may be by direct recruitment or by promotion. If the appellant is allowed to continue in service, the right of some unknown person will be jeopardized and he will be deprived of opportunity to hold the post of Librarian without even being heard by the Court.

For the reasons mentioned above, the appeal is dismissed. However, it is made clear that if the writ petition filed by the appellant is ultimately allowed, then the University shall be bound to pay him the consequential monetary benefits by treating him to have physically worked on the post of Librarian till the date of 60 years.

At this stage, learned counsel made a request that the Court may direct the Singe Bench to hear the case at an early date. In our opinion, there is no question of the Division Bench issuing a direction to the Single Bench to hear a case within a particular timeframe. Therefore, the prayer made by the learned counsel is rejected. However, liberty is given to the writ petitioner to make a request to the concerned Single Bench for taking up the case out of turn.

G.S.SINGHVI, C.J.

3rd July, 2006

G.V.SEETHAPATHY, J.

ARS/svs

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[1] (1997) 8 SCC 350